No. 98-266 (7)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

ANNE ARUNDEL COUNTY, MARYLAND,

Petitioner,

v.

JOHN D. WEST, *et al.*,

Respondents,

UNITED STATES OF AMERICA,

Intervenor.

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SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

AMICI CURIAE BRIEF OF PRINCE GEORGE'S COUNTY, BALTIMORE CITY, ST. MARY'S COUNTY AND WORCESTER COUNTY, MARYLAND, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the courts below erroneously applied the incorrect standards, in direct conflict with other circuit courts of appeal, for determining whether emergency medical personnel qualify for the partial exemption provided by §7(k) of the Fair Labor Standards Act?

II. Whether the application of the Fair Labor Standards Act to State and local government violates the Constitutional principles of federalism and constitutes an impermissible intrusion by the Federal Government into the core functions of State and local governments?

LIST OF PARTIES

The Petitioner in this proceeding is Anne Arundel County, Maryland.

Respondents are John D. West; Marianne C. Anderson; Michael C. Andresky; Susan L. Bailey; Brian L. Bond; Charles W. Boyer; Richard A. Brock; Daniel Brown; Anthony W. Burke, Sr.; Tracy L. Burke; Guy Steven Childers; Kim J. Cissna Ross; Riccardo Colella; Larry P. Collison; Michael Albert Connor; Michael E. Cox, Jr.; Timothy Crawford; Anita Y. Dunham; Michele Delalla; Grafton G. Dietz, Jr.; James H. Edwards, Jr.; Mara L. Eicens; Wayne Eisenhardt; Karen Estepp; Douglas G. Fishel, Jr.; Terry A. Gero; James L. Glime; James E. Goetz; Jeffrey P. Gormley; John Greene; Kathleen D. Grote; Russell Lloyd Harris; Sharon M. Henry; Michael William Herz; Lisa Ann Housand; Joseph M. Huber; William W. Isennock; Daniel L. Jarzynski; C. Edward Jett; Robert Frederick Johnson; Stephen E. Jones; Richard Allen Joy; Clifford C. Kooser II; James David Kruger; Douglas P. Marshall; Michael J. Marsiglia; William L. Merson; Timothy L. Mikules; Michael Steven Moore, Jr.; Greg A. Novak; George L. Pfeffer, Jr.; Noldon Pope; Mark Steven Praschak; Patrick O. Prendergast; Carol Ann Rabinowitz; Cynthia Ray Ell; Hurshel W. Shank, Jr.; Cecilia W. Sledgeski Warren; Gregory Lee Smith III; Randolph S. Spies; Thomas Stag; Peter G. Staley; Logan Starr, Sr.; Frank R. Stamm; David Sterling; Michael Swain; Keith D. Swindle; John Steven Thompson; Timothy Aldyn Tucker; Robert T. Vaccaro, Jr.; Robert Valderas; Marcus D. Wallace; William H. Ward; Khris Edwin Wildt; William Mark Wilhelm; David K. Williams; Raymond J. Schmidt; Kimberly S. Schneider; Michael Andrew Smith; John B. Wellman; Robert A. Harsh; Robert Anthony Mead; James

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The United States of America is an Intervenor.

Prince George's County, Baltimore City, St. Mary's County and Worcester County, Maryland, are *Amici Curiae*.

CORPORATE DISCLOSURE

Baltimore City, Prince George's County, St. Mary's County and Worcester County, Maryland are bodies corporate and politic, organized under the laws of the State of Maryland. None of the foregoing political subdivisions of the State of Maryland has corporate parents or subsidiaries.

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Other Material:

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Prince George's County, Baltimore City, St. Mary's County and Worcester County, Maryland, respectfully support the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

INTEREST OF THE AMICI CURIAE

Prince George's County, Baltimore City, St. Mary's County and Worcester County constitute a cross-section of political subdivisions of the State of Maryland. Two — Baltimore City and Prince George's County — are among the most populous political subdivisions of Maryland. They are metropolitan/suburban in nature, with strong executive governments, a public charter that functions as a local "constitution" and considerable home rule/local autonomy. St. Mary's County and Worcester County (located in the most southern part of Maryland's Western Shore and the most eastern part of Maryland's Eastern Shore, respectively) are predominately small town/rural and are governed by county commissions with limited local powers granted by the State.

All of the political subdivisions who address the Court through this brief contend that the Federal Government has no constitutional authority to regulate the manner in which the States and their political subdivisions exercise functions and responsibilities which are uniquely local in the scheme of federalism. The parties to this brief also assert that the Fair Labor Standards Act, as applied in the circumstances of the subject case, is unconstitutional.

Baltimore City and Prince George's County have each had to pay out considerable public funds to their emergency medical services employees to settle cases as a consequence of decisions by Federal District Judge Walter Black, interpreting §7(k) of the Fair Labor Standards Act as amended, 29 U.S.C. §207(k), including the decision which is the subject of the petition for writ of certiorari herein. [1] Prince George's County has also had to change the method by which it delivers emergency medical services within its borders, to the detriment of the methods which it believes is optimum for providing such services, which are a core function of state and local governments.

Even though St. Mary's and Worcester Counties do not at this time utilize paid emergency medical service employees as a means of performing that public health and safety function, they recognize that the intrusive federal regulation that is the subject of this case necessarily limits their future options as to the performance of their governmental functions.

In the case of Baltimore City and Prince George's County, not only have they already been adversely affected by Judge Black and the Fourth Circuit's interpretation and application of 28 U.S.C. §207(k), but also they find it particularly disturbing that, were they located in Texas or any other state in the Fifth Circuit (where the rule set forth in

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[1] Baltimore City's case is *Nally v. Mayor and City Council of Baltimore, Maryland*, 796 F. Supp. (D.Md. 1992). After the *Nally* decision was issued, the case settled. Prince George's County's case is *Hopkins v. Prince George's County, Maryland*, D. Md., Civil Action No. WMN 96-213. It too was settled, after issuance of the court of appeal's decision herein.

Bond v. City of Jackson, 939 F.2d 285 (5th Cir. 1991) prevails), they would not have needed to pay out all that public money and/or would not have needed to change the way they provide emergency medical services within their borders.

In short, all of the subdivisions who are parties to this brief urge the Court to grant the petition for writ of certiorari herein, because the Constitution bars the federal government from legislating as it has done herein and because, even if the legislation were not unconstitutional, the writ is necessary because, right now, no State or local public agency can be sure what 28 U.S.C. §207(k) really means.

OPINIONS BELOW

The opinion of the court of appeals is reported as *West v. Anne Arundel County, Md.*, 137 F.3d 752 (4th Cir. 1998). The opinions of the district court are unreported. All of these opinions appear in the appendix to the petition filed by Anne Arundel County.

JURISDICTION

The court of appeals has entered its judgment, which this Court may review by issuing a writ of certiorari to exercise jurisdiction of this case under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *amici curiae* adopt the provisions set forth in the petition for writ of certiorari.

STATEMENT OF THE CASE

Baltimore City, Prince George's County, St. Mary's County and Worcester County are all political subdivisions of the State of Maryland. Baltimore City and Prince George's County exercise the powers of local government and home rule provided by the Maryland Constitution to chartered counties. Md. Const. Art. XI-A; Md. Ann. Code, Art. 25A (1998). Worcester County exercises the powers of local government and home rule provided by the Maryland Constitution to counties operating under an alternative code form of government. Md. Const. Art. XI-F; Md. Ann. Code, Art. 25B (1998). St. Mary's County exercises the general powers conferred upon County Commissioners provided by Maryland Code Annotated Article 25. At any time, St. Mary's County may elect to adopt a charter or code form of government and exercise the powers of local government and home rule provided under the respective provisions of the Maryland Constitution.

At present, all political subdivisions party to this *amicus* brief provide fire, rescue and emergency medical services to their communities. Baltimore City and Prince George's County utilize paid emergency medical services personnel, as well as paid firefighters, to provide these essential services. Both Baltimore City and Prince George's County, based upon the needs of their communities and the resources available to them, have determined what they believed to be the most effective manner in which to deliver fire protection, rescue and emergency medical services.

Both political subdivisions, however, have had to alter to some degree their methods of delivering essential fire,

rescue and emergency medical services as a result of Fair Labor Standards Act lawsuits filed against both political subdivisions and as a result of the decisions by Federal District Court Judge Black regarding §7(k) of the Fair Labor Standards Act as amended, 29 U.S.C. §207(k). One of those decisions is the case that is the subject of this petition. The application of the Fair Labor Standards Act to local governments and, in particular, to firefighters and other fire department field operations employees who perform emergency medical services has interfered with methods originally selected to provide fire, rescue and emergency medical services by those in the best position to judge the needs of the community and the resources available, that is, by the local political subdivisions themselves.

While St. Mary's County and Worcester County do not currently employ paid emergency medical services employees, the federal limitations imposed by the Fair Labor Standards Act as amended and as construed by the Fourth Circuit significantly limits future options for provision of such services.

The application of the Fair Labor Standards Act, particularly §7(k), to States and their political subdivisions has affected the manner in which these local governments schedule employees, determine pay rates, assign duties, negotiate labor contracts and fund their fire departments. Such decisions are clearly matters of local concern and the federal government's influence in these realms violates the principles of federalism guaranteed by the United States Constitution.

I.

EVEN WERE IT CONSTITUTIONAL TO APPLY THE FAIR LABOR STANDARDS ACT TO STATE AND LOCAL GOVERNMENTS, THE COURTS BELOW APPLIED THE ACT ERRONEOUSLY IN THIS CASE.

The lower courts in this case erroneously determined whether the emergency medical employees at issue qualify for the §7(k) partial exemption. Moreover, the lower courts' improper denial of the exemption has had significant deleterious effects on several local governments that fall within the lower courts' jurisdiction. The adverse effect on Prince George's County, described below, serves as but one example of the situation created by the courts' erroneous interpretation of §207(k).

A. The FLSA and the §207(k) Exemption

As a general rule, the Fair Labor Standards Act requires that an employer pay each of its employees an overtime premium equivalent to one-half of the employee's regular rate of pay for each hour that the employee works in excess of 40 hours in a workweek.[2] 29 U.S.C. §207(a)(1).

Section 7(k) of the Act, however, provides a partial exemption from the overtime premium for a public agency "with respect to the employment of any employee in fire protection activities or any employee in law enforcement

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[2] In other words, if an employee's regular rate of pay is $20 per hour, the employee is to be paid $30 per hour for each hour worked in excess of 40 in a workweek. Thus, if the employee works 60 hours in a workweek, his/her gross pay for that workweek is (40 x $20) + (20 x $30) = $1400.

activities.... " 29 U.S.C. §207(k). Where the §7(k) partial exemption applies, the fifty percent premium must be paid only to the extent that the employee's hours during a regular and recurring work period of not less than 7 or more than 28 consecutive days exceed an average of approximately 7.57 hours per calendar day for employees engaged in fire protection activities, and 6.11 hours per calendar day for employees engaged in law enforcement activities. See 29 C.F.R. §§553.224, 553.230.

Thus, for employees employed by a public agency in fire protection activities, the overtime premium would be required only if the employee, for example, worked in excess of 53 hours in a regular and recurring work period of 7 calendar days (7 x 7.57 = 53), or in excess of 212 hours in a regular and recurring work period of 28 calendar days (28 x 7.57 = 212). See 29 C.F.R. §§553.224, 553.230.

The Department of Labor has issued regulations defining what is meant by the term "employee in fire protection activities" for purposes of the §7(k) exemption. Section 553.210(a) of Title 29 of the Code of Federal Regulations provides a four-part test. However, §553.210(a) also provides that "the term [employee in fire protection activities] would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection activities. See §553.215."

B. The Deleterious Effects Suffered By Prince George's County as a Result of the Lower Courts' Interpretation of the § 207(k) Partial Exemption

In the case of Prince George's County, employees employed in fire protection activities had a regular work

schedule of 24-hour tours of duty on 7 days during a work period of 28 consecutive days. On the basis of a traditional workweek of 7 days, the employees worked 48 hours (2 days) during three of the weeks and 24 hours (1 day) during the fourth week. Under the §7(k) partial exemption, no overtime premium would be due because the employee would work only 168 hours in a 28-day work period. However, without the §7(k) exemption, the employee would be entitled to a fifty percent overtime premium for 24 hours worked during the 28-day work period, reflecting the 8 hours in excess of forty worked during the 3 "48-hour weeks" that occur during the 28-day work period.

The Prince George's County Fire Department provides all of the emergency response services typically required by a modern metropolitan fire department. It responds, *inter alia*, to reports of fires, automobile accidents, bodily injuries and medical emergencies of all kinds, hazardous material spills, children and adults stuck in sewers or in trees or any other similar situation involving a need for rescue.

These services are provided by both volunteers and career (*i.e.*, paid) firefighters. All firefighters must be trained as Emergency Medical Technicians ("EMTs"). In addition, the Fire Department utilizes both volunteer and career paramedics, who have training in more advanced emergency techniques than the average EMT/Firefighter, as well as training in the fundamentals of fire suppression.

The career firefighters and paramedics are represented by the same union and are covered by the same collective bargaining contract. Until the District Court's judgment in *West v. Anne Arundel County*, the career firefighters and paramedics were assigned to work together as integrated

teams, assigned to one of the four shifts [3] and one of the several Fire Department facilities located throughout the County, and dispatched together to handle emergencies.

During the fiscal year ending June 30, 1996 (a representative period), calls for fire suppression services constituted a minor portion of the total emergency services calls handled by the Fire Department. During that period, there were approximately 103,000 Fire Department responses to calls for emergency medical services, divided relatively equally between medical emergencies and accidental (principally motor vehicle) injuries. Of these 103,000 responses, approximately 73,000 were responses by basic life support units (staffed by firefighters) and only 30,000 were responses by advanced emergency medical services units (staffed by paramedics). The firefighters and paramedics regularly responded to the same emergencies. *They operated as a team.*

As a result of Judge Black's decision, subsequently affirmed by the Court of Appeals for the Fourth Circuit, it became prudent for Prince George's County to employ its paramedics as if they were not covered by the §7(k) partial exemption. That meant scheduling the paramedics on the basis of the traditional 40-hour, 7-day work week, with an overtime premium due after 40 hours of work in a work week.

The County did not want to have to make this change. Aside from the direct financial costs, shift continuity was disrupted because paramedics would no longer be working

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[3] In a 28-day work period, each shift worked seven 24-hour tours of duty, thereby requiring four shifts for full coverage, 24-hours per day, 365-days per year.

the same schedule as the firefighter/EMTs. Likewise, team cohesion was undermined because the same crew would no longer be working together on a consistent basis.

Nor did the paramedics like the change. They, as well as their Union, considered the 24-hour tour of duty, seven times in 28 days, to be ideal scheduling. Indeed, when the County felt compelled to change to a 40-hours per week schedule in order to comply with Judge Black's decision in *West*, the paramedics responded by commencing a law suit against the County for having worked them on the basis of the 28-day work period schedule, on the theory that the schedule and pay system they actually preferred violated the Fair Labor Standards Act!

C. The Lower Courts' Interpretation of the §7(k) Exemption is Erroneous and Conflicts with the Decisions of Other Jurisdictions.

The Department of Labor's Regulations (29 C.F.R. §553.210(a)) expressly provide that §7(k)'s reference to "any employee...in fire protection activities" is not limited to fire suppression personnel, but "would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection activities. See §553.215."

In *Nally v. City of Baltimore*, 796 F. Supp. 194 (D. Md. 1992), Judge Black held that fire department paramedics must meet the four-part test set forth in 29 C.F.R. §553.210(a) for fire suppression personnel, ignoring the import of the "would also include" language of 29 C.F.R. §553.210(a).

Moreover, in *West*, Judge Black and the court of appeals held that even if the paramedics meet the four-part test set forth in 29 C.F.R. §553.210(a), the §7(k) partial exemption is not applicable unless the paramedics spend eighty percent or more of their time in fire suppression activities, pursuant to 29 C.F.R. § 553.212.

The requirement that paramedics meet the four-part test set forth in 29 C.F.R. §553.210(a) is directly contrary to the holdings of the Fifth Circuit in *Bond v. City of Jackson*, 939 F.2d 285 (5th Cir. 1991), the Sixth Circuit in *Justice v. Davidson County, Tennessee*, 4 F.3d 1387 (6th Cir. 1993), and the Seventh Circuit in *Alex v. City of Chicago*, 29 F.3d 1235 (7th Cir. 1994), *cert. denied*, 513 U.S. 1057 (1994). Those cases use the less stringent two-part test set forth in 29 C.F.R. §553.215 to determine whether paramedics are an "integral part of the public agency's fire protection activities," as required by 29 C.F.R. §553.210(a). That approach seems particularly appropriate in view of the fact that 29 C.F.R. §553.210(a) ends its reference to fire department "rescue and ambulance service personnel" by directing the reader to "See §553.215."

Moreover, the contrary approach used by Judge Black and the Fourth Circuit produces the inexplicable and incongruous result that the §7(k) partial exemption for "any [public agency] employee . . . in fire protection activities" is more readily available when public agency paramedics are <u>not</u> employed by a fire department and the less stringent §553.215 two-part test indisputably applies, then it is available when the paramedics are employed by a fire department.

In addition, the notion that paramedics employed by a fire department who are able to meet the four-part test of 29 C.F.R. §553.210(a) are not covered by the §7(k) exemption, as a result of 29 C.F.R. §553.212, if twenty percent or more of their time is spent on *medical* emergencies, essentially renders §7(k) a nullity insofar as any modern metropolitan fire department is concerned. As the court of appeals noted in *West*:

> [D]uring the period at issue in this lawsuit, at least eighty percent of the Fire Department's calls required only emergency medical services and did not involve fire suppression at all. Medical services which are not rendered at the scene of any fire do not qualify as exempt activities.

West, 137 F.3d at 761. If that statement of law were correct, not only would no fire department paramedics ever be eligible for the §7(k) exemption, but also the fire department suppression forces would also never be entitled to the §7(k) exemption *because essentially all metropolitan fire department operational employees spend more than twenty percent of their time in connection with "medical services which are not rendered at the scene of any fire."*

The petition for a writ of certiorari should be granted because, if the court of appeals decision in *West* is correct, the §7(k) partial exemption is no longer, as a practical matter, available to any fire department employee employed by fire departments located within the states comprising the Fourth Circuit, a result clearly not intended by Congress.

Finally, the petition for a writ of certiorari should be granted because if Anne Arundel County or Prince George's County or Baltimore City were located in Texas and the prevailing law was as stated by the Fifth Circuit in *Bond v. City of Jackson*, 939 F.2d 285, there would be no question that the §7(k) exemption would apply to these paramedic employees. That a public agency fire department in Texas has greater flexibility in scheduling its emergency medical services personnel than one located in Maryland is intolerable. It is especially intolerable to the Maryland jurisdictions since the 5th Circuit's decision (constitutional considerations aside) is correct.

II.

AS APPLIED IN THE PRESENT CASE, THE 1974 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT VIOLATE CONSTITUTIONAL PRINCIPLES OF FEDERALISM

The Tenth Amendment provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. Amend. X. In adopting the principles explicitly set forth in the Tenth Amendment, and implicitly provided by the structure of the Constitution itself,[4] the Framers of the

[4] The Framers' enumeration of specific powers expressly granted to Congress implies that there are powers, unenumerated, beyond Congress's reach. *Printz v. United States*, 112 S.Ct. 2365, 2376 (1997).

Constitution provided for a system of dual sovereignty to prevent concentration of power in one location as "an expedient solution to the crisis of the day." *Printz v. United States*, __*U.S.*__,117 S.Ct. 2365, 2383 (1997). The Framers also recognized that certain powers and responsibilities are better suited to local and State governance and sought to ensure that such powers would be free from Federal infringement. *The Federalist*, No. 45, at 313 (J. Madison)(J.Cooke ed. 1961).

Application of the Fair Labor Standards Act's provisions to fire departments, including their emergency medical personnel, constitutes a direct infringement upon the Constitutional guarantee of dual sovereignty. While the Court in *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985), ruled that applying the Fair Labor Standards Act to State and local governments does not violate the system of federalism established by the Constitution, recent cases have reaffirmed several of the principles underlying federalism and its limitations on Congress' power under the Commerce Clause, calling into question the validity of *Garcia*. *Printz*, 117 S.Ct. 2365 (1997)(Brady Handgun Violence Prevention Act's provisions requiring State officials to enforce Federal law violated Tenth Amendment); *New York v. United States*, 505 U.S. 144, 156 (1992)(Provision of Low-Level Radioactive Waste Policy Act mandating States to take title to radioactive waste under certain circumstances violated Tenth Amendment); *United States v. Lopez*, 514 U.S. 549 (1995)(Gun Free School Zones Act of 1990 exceeded Congress' Commerce Clause authority); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996)(Article I of the Constitution did not empower

Congress to abrogate the States' Eleventh Amendment immunity.).[5]

Moreover, the very nature of the core State functions implicated by the present case -- provision of fire, rescue and emergency medical response services -- underscores the local nature of the interests concerned and the intrusiveness of Congress' infringement upon State sovereignty through the 1974 Amendments to the Fair Labor Standards Act.

In establishing a system of dual sovereignty, the Framers recognized that certain concerns are inherently local in nature and reserved to the States' sole power. *The Federalist* No. 45, at 313 (J. Madison)(J.Cooke ed. 1961)("The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and the prosperity of the State.").[6] Provision of "fire prevention, police protection, sanitation, and public health" are "activities that epitomize the concerns of local, democratic self-government." *Garcia,* 469 U.S. at 575 (Powell, J., with whom Chief Justice Burger, Justice Rehnquist, and Justice O'Connor joined, dissenting) (discussing *National League of Cities v. Usery,* 426 U.S. 833, 851 (1976)).

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[5] In fact, while the Fourth Circuit recognized the recent cases reaffirming the principles of federalism, it ruled that it was bound by the *Garcia* decision until it is overruled by this Court. *West,* 137 F.3d at 760.

[6] While the Constitution provides Congress with substantial power under the Commerce Clause, Constitutional principles of federalism present a significant limitation upon that power. *New York v. U.S.,* 505 U.S. at 156-57.

The 1974 Amendments to the Fair Labor Standards Act apply the Fair Labor Standards Act requirements to State and local governments and direct the manner in which States and their political subdivisions may operate their fire, rescue and emergency medical services in several critical respects. In general terms, the 1974 Amendments require State and local governments to meet the minimum wage and overtime requirements applied to the private sector. *See* 29 U.S.C. §203(e)(2)(C). In specific terms, application of the FLSA to the emergency service employees at issue in this case affects the manner in which fire departments structure schedules, assign duties, structure and permit compensatory time off and pension benefits, determine pay and conduct labor relations. In addition, the actual funding of fire stations themselves may be affected by the constraints and burdens placed on local budgets by the FLSA.[7]

The differing demographics and characteristics of each State and each political subdivision of a State affects the needs and services required by each and thus makes the provision of such services a matter of inherent local concern.

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[7] The extent of Federal intrusion into the details of state and local government's core governmental functions, especially its public health and safety functions, is not limited to the §7(k) issue in *West*. For example, Prince George's County, Baltimore City, and St. Mary's County have each been defendants in Federal court in cases involving whether, how and to what extent public safety officers who are assisted by dogs while on duty must be compensated for their incidental off-duty care, feeding, grooming, exercising, etc. of their canines. Indeed, the federal court "canine" cases are legion. *See, e.g., Truslow v. Spotsylvania County Sheriff*, 783 F. Supp. 274 (E.D. Va. 1992). To the extent that *Garcia's* reversal of *National League of Cities* was predicated on the judicial burden of deciding what are core functions of local government, *see Garcia*, 469 U.S. at 538-47, it has had the paradoxical effect of making federal cases out of a plethora of routine local government personnel practices.

For example, the *amici curiae* that are parties to the present brief, are all located in the State of Maryland and yet they present very different requirements with regard to fire, rescue and emergency medical services.

Baltimore City and Prince George's County are both part of major metropolitan areas and must address the myriad of public safety concerns characteristic of such areas.

In contrast, St. Mary's and Worcester Counties are predominantly rural areas with growing populations. The needs of these counties are substantively and quantitatively different from those of Prince George's County and Baltimore City. Both rural counties respond to fewer calls in general; however, they have a much smaller tax base to fund the provided services.

These four localities, which represent but a small sampling of political subdivisions nationwide, present diverse needs in terms of fire suppression, rescue and emergency medical services. This is precisely the reason that these services are inherently matters of local concern, reserved to the State governments by the Tenth Amendment. While the Constitution confers upon Congress broad powers in the Commerce Clause, "the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States." *New York v. U.S.*, 505 U.S. at 157. Matters which are the very essence of State and local concern, such as the fire protection, rescue and emergency medical services at issue in this case, are protected from federal infringement by the principles of dual sovereignty both explicitly and implicitly provided by the Constitution.

Accordingly, the Court should grant Petitioner Anne Arundel County, Maryland's petition for writ of certiorari to preserve the integrity of the States' sovereign interests and to nullify the 1974 Amendments to the FLSA as applied below.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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Respectfully submitted,

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